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ORIGINAL

FILED

AUG 11 2008

CLERK  
United States Bankruptcy Court  
San Jose, California

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

In re ) CASE NO. 08-50378-RLE  
MICHAEL BERUBE, ) Chapter 7, R.S. No. MAW-39  
Debtor. )  
 )  
 ) FIRST SUPPLEMENT TO  
 ) DEBTOR'S MOTION TO VACATE  
 ) ORDER GRANTING MOTION FOR  
 ) RELIEF FROM AUTOMATIC STAY  
 ) (Bankruptcy Rule 9024, Fed. Rule 60(b))  
 )  
 ) DATE: Wednesday, September 17, 2008  
 ) TIME: 10:30 a.m.  
 ) CTRM: 3099  
 )  
 ) 280 South First Street, #303  
 ) San Jose, California 95113-3099

Debtor, pursuant to Bankruptcy Rule 9024, Federal Rule of Civil Procedure 60(b), and local practice, files this First Supplement to his previously filed Motion, service dated July 23, 2008, for an order vacating this Court's prior Order of April 16, 2008 which granted the Motion of Mortgage Electronic Registration Systems, Inc. Solely

as Nominee for Alliance Bancorp, its successors and/or assigns (hereafter "Movant") for relief from the automatic stay.

**MEMORANDUM OF POINTS AND AUTHORITIES**

The Background Material Facts set forth in the original Motion service dated July 23, 2008 are incorporated herein by reference. Certain facts are re-alleged herein for purposes of this First Supplement to the subject Motion.

On or about February 26, 2008, Movant filed a Motion for Relief From Automatic Stay, which Motion was thereafter withdrawn and re-filed on or about March 26, 2008. For purposes hereof, both Motions for Relief From Automatic Stay will be referred to as "Movant's Motions".

Neither of Movant's Motions, nor the accompanying sworn Declarations of one Andrew Kneady in alleged support of Movant's Motions, contained any reference to certain material facts known to Movant at the time that both Motions and both Kneady Declarations were filed (that being in February and March of 2008), to wit: that on October 17, 2007, Movant, through one "Yvonne J. Wheeler, Asst. Sec." of Movant, executed an Assignment of the Deed of Trust the subject of Movant's Motions and both Kneady Declarations whereby Movant granted, assigned, and transferred all of its beneficial interest in the Deed of Trust to the property the subject of this litigation to an entity denominated as Chase Home Finance, LLC, and further that on that same day (October 17, 2007), the same "Yvonne J. Wheeler", now affirmatively representing herself to be the "A.V.P." of "Chase Home Finance LLC by Cal-Western Reconveyance Corporation as Attorney-In-Fact", executed a second Assignment of the same Deed of Trust the subject as the first Assignment (Instrument No. 2006094479) to an entity

known as "Homesales, Inc.", by which Chase Home Finance LLC granted, assigned, and transferred all beneficial interest under the subject Deed of Trust to Homesales, Inc. Neither of these Assignments were recorded until after the Trustee's Sale.

There is no allegation in either of Movant's Motions or either of the sworn Kneady Declarations that Homesales, Inc. ever re-assigned its interest in the subject Deed of Trust back to Movant at any time in order for Movant to seek relief in this proceeding or which granted Movant with any rights to seek such relief on behalf of Homesales, Inc.

Although Movant lost its legal standing to seek any relief incident to the subject Deed of Trust on October 17, 2007 (including the right to seek any relief from the automatic stay to pursue a Trustee's Sale), Movant filed both Motions for Relief From Automatic Stay and both sworn Kneady Declarations in February and March of 2008 by which, pursuant to Rule 9011, Movant affirmatively represented to this Court that it had the legal authority to seek relief from the automatic stay to pursue a Trustee's (foreclosure) of the Debtor's property.

As further evidence of the wrongful and unlawful intent of Movant, Movant's counsel forwarded correspondence to the Debtor's prior Bankruptcy counsel dated February 26, 2008 (accompanying the original Motion for Relief From Automatic Stay) whereby Movant's counsel affirmatively represented that it legally represented Chase Home Finance which was seeking relief from the automatic stay "so that it can proceed to enforce its security interest in the above-referenced property". A true and correct copy of the subject correspondence is attached hereto and incorporated herein by reference.

The subject letter further stated: "Also, please be advised that Chase Home Finance maintains the right to continue with any and all lawful actions necessary to protect *its*

security interest in the property, including the right to seek relief from the Automatic Stay to foreclose on the property if the loan is delinquent", and that "absent a written agreement to the contrary signed by your client and Chase Home Finance,... will not stop Chase Home Finance with its efforts to obtain relief from the automatic stay and/or foreclosure of the property." (emphasis added)

The Applicable Law set forth in the original Motion service dated July 23, 2008 is incorporated herein by reference.

The Application of Law to Facts and Relief Sought section of the original Motion service dated July 23, 2008 is incorporated herein by reference.

Dated August 6, 2008.

DINAPOLI & SIBLEY

*for* John E. F. DiNapoli (CA SBN 84365)  
*for* W. Jeff Barnes (*pro hac vice*)  
Attorneys for Debtor

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been forwarded, via U.S. Mail, to all parties and counsel on the attached Service List on this 6th day of August, 2008.

DINAPOLI & SIBLEY

*/s/* John E. F. DiNapoli (CA SBN 84365)  
*for* W. Jeff Barnes (*pro hac vice*)  
Attorneys for Debtor

**SERVICE LIST**

**DEBTOR**

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**CHAPTER 7 TRUSTEE**

John W. Richardson  
5161 Soquel Drive, #F  
Soquel, California 95073

**U.S. TRUSTEE**

U.S. Trustee, Department of Justice  
U.S. Federal Building  
280 S. 1<sup>st</sup> St., #268  
San Jose, California 95113-3004

**JUNIOR LIENHOLDERS**

GMAC Mortgage  
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P.O. Box 79135  
Phoenix, Arizona 85062-9135

**RESPONDENT'S COUNSEL**

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February 26, 2008

Copy

James M. Lauderdale  
Lauderdale Law Offices  
150 Carmelito Ave.  
Monterey, CA 93940

Re: In re Berube, Michael  
Bankruptcy Case No.: 08-50378-RLE  
Loan No.: 1846599017  
Property Address: 9 Sonoma Lane, Carmel, California 93923  
Our File No.: 000365-001316

Dear Mr. Lauderdale.

We represent Chase Home Finance in the above-referenced bankruptcy. Served herein is a Motion for Relief From Automatic Stay in which Chase Home Finance is seeking relief from the stay so that it can proceed to enforce its security interest in the above-referenced property. However, it may be possible for your client to avoid foreclosure on the property. In an effort to help your client find a solution, Chase Home Finance would like to review available programs with you to save your client's property from foreclosure. Each of these programs has different restrictions, guidelines, and qualifying criteria, and each borrower must be addressed individually. If you are interested in obtaining information to determine whether your client qualifies for one of these programs, please contact our firm at lossmitt@piteduncan.com.

Please note, each borrower is required to submit financial information to Chase Home Finance. After a careful review of your client's financial situation, they may be eligible for one of Chase Home Finance's available programs. As an increase in the delinquency on your client's loan makes it more difficult to offer alternatives to foreclosure, please contact our firm at lossmitt@piteduncan.com as soon as possible if your client is interested in avoiding foreclosure.

Please note that this letter does not constitute a commitment or approval for assistance. Also, please be advised that Chase Home Finance maintains the right to continue with any and all lawful actions necessary to protect its security interest in the property, including the right to seek relief from the Automatic Stay to foreclose on the property if the loan is delinquent. Indeed, absent a written agreement to the contrary signed by your client and Chase Home Finance, the review and negotiation of a potential repayment program or other alternatives will not stop Chase Home Finance with its efforts to obtain relief from the Automatic Stay and/or the foreclosure of the property.

Please disregard this letter if your client has already sent the amount necessary to bring their account current with Chase Home Finance or if your client has no desire to retain the property and prevent foreclosure.

Sincerely,

  
Melodie A. Whitson

MAW:ajd